UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DAVID R. SNYDER, Plaintiff, -vs- J. BRADLEY KING and TRENT DECKARD, in their official capacities as Co-Directors of the Indiana Election Division; and LINDA SILCOTT and PAM BRUNETTE, each in her official capacity as a member of the St. Joseph County Voter Registration Board. Defendants.	)	CAUSE NO: 1:10-cv-01019-WTL-MJD

AMENDED COMPLAINT

Comes now Plaintiff, David R. Snyder ("Snyder"), and pursuant to Rule 15 (a) (2) of the Federal Rules of Civil Procedure by agreement of the parties, submits the following Amended Complaint:

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief under 42 U.S.C. § 1983 against the State and County Defendants who are acting pursuant to state law in depriving Plaintiff Snyder of his constitutional and statutory right to vote. Snyder brings this action to redress past and ongoing violations of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg, *et seq.*; the Help America Vote Act of 2002 ("HAVA"),

42 U.S.C. § 15301, *et seq.;* the Civil Rights Act of 1964, 42 U.S.C.§ 1971, *et seq.*; the First and Fourteenth Amendments to the United States Constitution; and Article 2, § 8 of the Indiana Constitution; for discriminatory and unlawful procedures that disenfranchised Snyder while he was incarcerated by reason of a misdemeanor conviction, even though Article 2, §8 of the Indiana Constitution permits the deprivation of the right to suffrage only of persons convicted of and imprisoned for an "infamous crime," which the courts of Indiana have defined as a felony.

SUBJECT MATTER JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343(a)(4), in that this is a suit against state actors acting under color of state law to secure equitable or other relief under acts of Congress providing for the protection of the right to vote. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202.

VENUE

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the State Defendants have their principal office in this district and a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

4. Snyder is a resident of South Bend, Indiana, who is over 18 years of age and who had previously registered to vote, and who otherwise meets the qualifications set

forth by Article 2, Section 2 of the Indiana Constitution to be an eligible voter entitled to cast a valid and countable vote in any public election.

5. Co-Directors King and Deckard are the chief election officials responsible for coordination of state responsibilities under the NVRA. Indiana Code §3-7-11-1, and for maintaining Indiana's statewide voter registration list as required by HAVA, 42 U.S.C. § 15483, and they are sued in their official capacity.

6. Defendants Silcott and Brunette are members of the St. Joseph County Board of Voter Registration, and each is sued in her official capacity.

FACTUAL ALLEGATIONS

7. On July 31, 2008 a jury in St. Joseph County convicted Snyder of the offense of battery, a Class A misdemeanor under Indiana law. He was originally sentenced to serve six (6) months under house arrest, but that sentence was subsequently modified and he was incarcerated in St. Joseph County from March until May of 2009.

8. On March 4, 2009 the County Defendants, acting pursuant to state law, sent Snyder a letter while he was incarcerated on a State Form (VRG-17) stating that his voter registration had been cancelled effective immediately pursuant to I.C. § 3-7-46 because he had been convicted of a crime and incarcerated, and that his name was being removed from the statewide voter registration list established pursuant to the provisions of the Help America Vote Act ("HAVA"), 42 U.S.C. § 15483, and authorized by I. C. § 3-7-26.3.

9. Snyder's removal from the statewide voter registration list was effectuated

under the authority purportedly granted by I. C. §§ 3-7-13-4(a) and 3-7-46-1 and -2; and the IED's Standard Operating Procedure, VRG 12.1, which states that a person "imprisoned following conviction of a crime is disfranchised during the person's imprisonment."

10. Pursuant to and in accordance with their interpretation of this statute, the State Defendants have advised all county election officials in Indiana that "individuals who are incarcerated following conviction of a felony OR a misdemeanor should be processed and their status changed to cancelled."

11. As a result of Defendants' cancellation of Snyder's voter registration, he has not been allowed to cast a vote that will be counted in any subsequent election, including a local referendum held in November 2009 and the primary election held in May 2010 at which the voters selected candidates for federal office.

12. Snyder has exhausted all administrative procedures available to him under the NVRA and I. C. § 3-7-11.

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LEGAL ALLEGATIONS

13. The NVRA, in 42 U.S.C. §1973gg (a), declares that the right of citizens of the United States to vote is a fundamental right; that it is the duty of the federal, state and local governments to promote the exercise of that right; and that discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter

participation in elections for federal office. Accordingly, one of the purposes of the NVRA, which was passed to reinforce the right of qualified citizens to vote, is to ensure that accurate and current voter registration rolls are maintained.

14. One of the ways in which the NVRA protects the right to vote is to limit the methods a State may use to remove individuals from its voting rolls and to ensure that eligible voters are not disenfranchised by improper removal. The NVRA expressly protects eligible voters from such unauthorized removal and, at 42 U.S.C. §1973gg-6 (a) (3) (B), prohibits the State from removing the name of any registrant from the official list of eligible voters except "as provided by State law, by reason of criminal conviction or mental incapacity."

15. The Civil Rights Act of 1964 expressly permits all citizens of the United States who are otherwise qualified by law to vote in any election. 42 U.S.C. §1971(a).

16. The right to vote in federal elections is also protected by the First and Fourteenth Amendments to the United States Constitution.

17. Article 2, Section 8 of the Indiana Constitution states that, "the General Assembly shall have the power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime." The Indiana Court of Appeals has defined the term "infamous crime" as an offense which permits imprisonment for more than one (1) year. *Taylor v. State Election Board of Indiana*, 616 N.E.2d 380, 384-85 (Ind. Ct. App. 1993); *Wilson v. Montgomery County Election Board*, 642 N.E.2d 258,

261 (Ind. Ct. App. 1994).

18. Defendants have interpreted I. C. §§ 3-7-13-4(a) and 3-7-46-1 and -2 to require them to remove from the official list of registered voters a person imprisoned following conviction for a misdemeanor. As thus interpreted, those statutes violate the NVRA, the Civil Rights Act of 1964, the First and Fourteenth Amendments to the United States Constitution, and Article 2, Section 8 of the Indiana Constitution, as applied to Snyder.

19. To the extent Defendants' interpretation of those statutes is determined by this Court not to be in violation of Article 2, Section 8 of the Indiana Constitution, the provision violates the First and Fourteenth Amendments to the United States Constitution.

DUE PROCESS ALLEGATIONS

20. Despite the requirements of Indiana Code §3-7-11 that he be provided a hearing within thirty (30) days, I. C. § 3-7-11-10, and the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution, Snyder received no hearing prior to his removal from the registration list or other response to his formal complaint until July 29, 2010, when Defendants advised him that his "removal from the voter registration [sic] comports with the intention of the Indiana General Assembly's statutes, and the powers provided by the Indiana Constitution." Accordingly, Defendants have violated Snyder's right to due process of law under the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Snyder prays that this Court:

1. Declare that Indiana election law, specifically I. C. §§ 3-7-13-4 (a) and 3-7-46, violate federal law and the First and Fourteenth Amendments to the United States Constitution insofar as the State Defendants have construed the word "crime" or "criminal conviction" to include misdemeanors;

2. Issue a permanent and preliminary injunction preventing Defendants and all those acting in concert with them from removing Snyder and other persons similarly situated, who have been convicted of and incarcerated for misdemeanors, from the state-wide voter registration list;

3. Certify to the Indiana Supreme Court the question whether the term "infamous crimes" in Article 2, Section 8 of the Indiana Constitution includes the misdemeanor for which Plaintiff was charged, convicted and incarcerated;

4. Enter judgment against Defendants for Snyder's costs and attorney fees pursuant to 42 U.S.C § 1988; and

5. Grant Snyder such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ William R. Groth
William R. Groth
Attorney for Plaintiff, David R. Snyder

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2011, a copy of the foregoing Amended Complaint was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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